

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
MAY 15 2007
[Signature]
CLERK

CHARLES CACIOPPO, JR.
and ANITA CACIOPPO,

Plaintiffs,

vs.

KYNAN C. TRAIL, M.D. and
SACRED HEART HEALTH SERVICES
d/b/a AVERA SACRED HEART
HOSPITAL,

Defendants.

CIV. 07- 4070

COMPLAINT

Plaintiffs, for their cause of action against Defendants, allege:

1. Plaintiffs are citizens of the State of Missouri; Defendant Kynan C. Trail, M.D. (hereinafter "Defendant Trail") is a citizen of the State of South Dakota; Defendant Sacred Heart Health Services d/b/a Avera Sacred Heart Hospital (hereinafter "Defendant Sacred Heart") is a corporation incorporated under the laws of the State of South Dakota, with its principal place of business in the State of South Dakota; that the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.

2. That on September 2, 2005, Plaintiff Charles Cacioppo, Jr. underwent a surgical procedure at the hands of Defendant Trail, at Defendant Sacred Heart in Yankton, South Dakota, said surgical procedure described as

“left inguinal herniorrhaphy with plug and patch”; that later on said day, Plaintiff Charles Cacioppo, Jr. underwent a second procedure at the hands of Defendant Trail, described as “exploration of the left groin with left orchiectomy.”

3. That Defendant Trail negligently performed the initial procedure, and negligently failed to respond to calls from agents of Defendant Sacred Heart following the initial surgery; and as a proximate cause of said negligence, Plaintiff Charles Cacioppo, Jr. necessarily underwent the left orchiectomy.

4. That Defendant Trail, in his discharge summary, wrote: “I was called from the office about 2:30 in the afternoon and mentioned that I had several patients to see. It was not implied that it was an emergency.”

5. That Defendant Trail had an absolute duty to return to the operating room to attend to Plaintiff Charles Cacioppo, Jr. Alternatively, Defendant Trail states that agents of Defendant Sacred Heart failed to inform him of the seriousness of the problem. If so, Defendant Sacred Heart was negligent, and as a proximate cause thereof, combined with the negligence of Defendant Trail, Plaintiff Charles Cacioppo, Jr. underwent the second surgical procedure and loss of his testicle.

6. That as a proximate cause of Defendants’ negligence, Plaintiff Charles Cacioppo, Jr. has sustained permanent personal injuries requiring hospital and medical attention; has sustained medical, hospital and pharmaceutical expenses; has sustained pain, suffering, disability, mental anguish, inconvenience; and the loss of capacity for the enjoyment of life.

7. That Plaintiff Anita Cacioppo, as a proximate result of Defendants' negligence, alleges that she has suffered the loss of services of her husband, Charles Cacioppo, Jr., and her comfort and happiness in his society and companionship has been, and will continue to be, impaired.

WHEREFORE, Plaintiffs pray for judgment against Defendants in a sum to be determined by a jury, together with their costs herein.

Dated at Sioux Falls, South Dakota, this 15th day of May, 2007.

HOY TRIAL LAWYERS, PROF.L.L.C.



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DEMAND FOR JURY TRIAL

Plaintiffs, Charles Cacioppo, Jr. and Anita Cacioppo, respectfully demand trial by jury upon all of the triable issues herein.

